



1996

Invisible Victims: A Comparison of Melville's Bartleby the Scrivener and Glaspell's A Jury of Her Peers

Robin West

Georgetown University Law Center, west@law.georgetown.edu

Georgetown Public Law and Legal Theory Research Paper No. 11-83

This paper can be downloaded free of charge from:
<https://scholarship.law.georgetown.edu/facpub/666>
<http://ssrn.com/abstract=1864885>

8 Cardozo Stud. L. & Literature 203 (1996)

This open-access article is brought to you by the Georgetown Law Library. Posted with permission of the author.
Follow this and additional works at: <https://scholarship.law.georgetown.edu/facpub>



***Invisible Victims:
A Comparison of Susan Glaspell's
Jury of Her Peers, and Herman
Melville's Bartleby the Scrivener***

Robin West

Somehow, by some process, some of the pains and suffering we sustain in life become cognizable legal injuries: if we are hurt through the defamatory utterances of others, we might seek compensation; if we suffer a whiplash in an automobile accident when we're rear-ended on the road, we might seek compensation for the pain we're put in; if we lose profits we might have made but for the interference of some third party with a contract we've entered, we might recover that loss. Other pains, although concededly injurious, and even concededly "caused" by some blameworthy individual or entity, are not cognizable: perhaps because they are too trivial, or too easily faked, or because they happened too long ago, or for any number of other reasons, the societal costs of fashioning a remedy exceed the benefits to the injured individual of recognizing one. Still others are also concededly injurious, but nevertheless not cognizable because they were not in fact caused by a culpable individual: the pain of grieving the non-negligently caused death of a beloved, or the pain inflicted by the strike of lightning or some other "Act of God," are such pains. Toward all of this uncompensated suffering, the law stands, so to speak, respectfully mute: although not compensated, the pain of grief, or of lightning, is at any rate not denied.

There is, however, another type of suffering — another "category" of harms — toward which the law stands in a quite different relationship. As a number of critical legal scholars have argued, some of the sufferings of daily life — some of the harms individually sustained — are not simply not compensated by our positive law, but their very existence is aggressively denied, trivialized, disguised or legitimated by our legal rhetoric.¹

These harms tend, not coincidentally, to be the byproduct of institutions, social systems, and structures of belief which overwhelming serve

the interests of powerful individuals, groups or subcommunities. Although law does not cause these harms it is complicit in the process by which they become “legitimate” — an accepted part of the terrain of daily living — and hence become invisible, often even to the individuals who sustain them. Particularly from a perspective internal to the legal system, such harms can be extremely hard to discern.

For some time now, it has been the contention of at least some practitioners of the “law and literature movement” that narrative literature may be one means by which the contours and dimensions of the subjective experience of persons regulated and governed by law become articulated. If so, and if the critical scholars are correct in arguing that a part of our subjective experience is of harms legitimated and thereby made invisible by legal rhetoric, then it seems that one use to which narrative literature might be put, is to “give voice” to the victims of “invisible harms” legitimated by law. And in fact, at least one prominent law and literature scholar heavily influenced by the critical legal studies movement — Brook Thomas — argues for precisely such a thesis in his seminal study on 19th century American fiction, *Cross Examinations of Law and Literature: Cooper, Hawthorne, Stowe and Melville*.² In that work, Thomas argues persuasively that all four of these prominent literary figures explored in their fiction the suffering of persons hurt by various social hierarchies, and the complicity of law in legitimating and masking that pain.

In this article, I hope to take this Thomasian claim one step further. I will argue that two short novellas, Herman Melville’s “Bartleby the Scrivener”³ — which Thomas does discuss⁴ — and Susan Glaspell’s “A Jury of Her Peers”⁵ — which he does not — not only seek to articulate and give voice to the victims of such legitimated harms in the way Thomas suggests, but that they also quite directly concern the process of legitimation *itself*. Thus, legitimation, as well as the invisible pains that are legitimated, is the subject matter of both stories. Both stories do indeed aim to make more visible the suffering of two groups of people in classically liberal societies: in “Bartleby,” employees in certain kinds of labor markets, who bear the brunt of the pain of alienating and commodifying the products of labor, and in “Jury of Her Peers,” wives in traditional, patriarchal marriages, who bear the weight of the institutionalized loneliness, abuse and injustice that such marriages often entail. But this exposure of otherwise hidden suffering is not all these stories do: both novel-

las are also centrally and undeniably concerned with legal process. They are clearly about *law*, as much as they are about labor markets or patriarchy. And yet, neither story offers a clear-cut indictment of law. Neither story portrays law — or even a legal actor — as the cause of the suffering they describe. Yet law is obviously complicit in the suffering of both Bartleby, in Melville's tale, and Minnie Foster, in Glaspell's. What both novellas, each written by astute and critical professional legal observers, aim to show is the way in which law masks or obfuscates this suffering. Both novellas, in short, aim to depict the "process of legitimation."

In neither case, however, is the process of legitimation a simple one. The law does not stamp these institutions, and the suffering they prompt, with a good housekeeping seal of approval, to which all involved parties quietly nod in acquiescence. Rather, in both cases, the law, through non-interference as well as positive acts, creates a private "space" within which the strong can dominate the weak free of the threat of state or community intervention, and within which the only check on such domination is either the moral conscience of the strong, or some sort of concerted political action of the weak. In both cases, there are significant obstacles to either of these checks being exercised, the most important of which, arguably, is ideological: as both novellas make clear, the "individual" wage worker, employer, wife and husband are characterized within each societal context in such a way as to render either a political response by the weak, or a moral act by the strong, unlikely. Legal rhetoric as well as positive law contribute, and mightily, to that characterization. As a result, the misery felt within these private relationships and private spaces proceeds unabated.

The first part of this essay takes up Melville's "Bartleby the Scrivener," and the second concerns Glaspell's "Jury of Her Peers." In each part, I will first examine the institution depicted in the novella, with a focus on the social construction of the "individual" which thereby emerges, and then on the injury, or simply the suffering, each institution entails and which each story depicts. I then look in each case at the process of legitimation. In the conclusion I will comment briefly on the lessons these stories might impart with regard to our own peculiarly modern, and even post-modern, habits of thought and action.

I. Bartleby the Scrivener

The plot of Melville's "Bartleby the Scrivener" can be readily summarized. The narrator of the story is a lawyer "of Wall Street" in the 1850s, who, in response to an increase in his business, finds himself in need of an additional copyist, or scrivener. After placing an ad, the narrator hires the first to respond: a despondent, pale, gauntly creature named Bartleby. Although even from the outset clearly eccentric in appearance and taste, Bartleby is initially a good worker — a careful, quiet, copyist with whom the lawyer has no complaints. The narrator in fact commends his productivity:

At first Bartleby did an extraordinary quantity of writing. As if long famishing for something to copy, he seemed to gorge himself on my documents. There was no pause for digestion. He ran a day and night line, copying by sunlight and by candle-light. I should have been quite delighted with his application, had he been cheerfully industrious. But he wrote on silently, palely, mechanically.⁶

In a very short time, however, Bartleby becomes uncooperative. He initially refuses to take on all assigned tasks other than the copying itself, (such as proofreading) saying simply and repeatedly that "he prefers not to," in response to all requests. Even more galling, it becomes clear to the employer that Bartleby has no place of residence, and is in fact living in the law office. Eventually Bartleby announces that he will do no copying as well, and in fact, that he "prefers not to" do any work at all. Bartleby does nothing but stand mute and expressionless, all day long, in the middle of the office. Understandably, this situation eventually becomes intolerable to his employer. Although tolerant of Bartleby's eccentricities, and even sympathetic to his plight, the lawyer, who is described throughout the book as above all a prudent man, cannot abide the presence of a ghost-like figure in his law office who does literally no work and never leaves the premises. The lawyer tries to convince Bartleby to leave, and offers him severance pay to facilitate his departure. But Bartleby prefers not to go. The narrator, an amiable and likeable figure, is unable to bring himself to call the police and have him physically hauled off the premises. In desperation, the narrator responds to the dilemma by literally mov-

ing his office — thus leaving Bartleby standing mute, expressionless and unmoving in the empty office suite. Eventually the narrator receives word that Bartleby, after refusing to leave the office building, has been arrested for vagrancy at the insistence of the new, bewildered tenant, and placed in the city “Tombs.” Moved by charity and humanitarian impulse, the narrator visits him there, twice. On the second visit he learns that Bartleby has refused to take all offers of food, and has starved himself to death.

Whatever else this enigmatic story may be “about”; it is most assuredly about an employment relationship between a lawyer and a scrivener, and in a highly particularized context. Indeed, Melville subtitles his story *A story of Wall Street*, and the subtitle is significant. The lawyer-narrator of Bartleby’s story is not just any lawyer, he is a Wall Street lawyer, who does, in his own words, “in the cool tranquillity of a snug retreat, [a] snug business among rich men’s bonds and mortgages and title-deeds.”⁷ We are also told by the lawyer, in a brief aside which has proven to be of interest to legally sophisticated critics, that “The good old office, now extinct, in the State of New York, of a Master of Chancery, had been conferred upon me. It was not a very arduous office, but very pleasantly remunerative.”⁸ We should not, though, confuse the equitable tilt of Chancery for a similar inclination in the narrator, as his next comment makes clear:

I seldom lose my temper; much more seldom indulge in dangerous indignation at wrongs and outrages; but I must be permitted to be rash here and declare, that I consider the sudden and violent abrogation of the office of Master in Chancery, by the new Constitution, as a — premature act; inasmuch as I had counted upon a life-lease of the profits, whereas I only received those of a few short years. But this is by the way.⁹

The “rich men” whose exchanges of property provide the narrator with a livelihood, however, remain in the background throughout the story. We never see or hear them. Indeed, even the narrator’s own work — the reduction, through law, of “property” into verbal formula, so as to facilitate their exchange and conversion into profit — remains in the background. What this “story of Wall Street” is about, at least on first blush, is not the bonds and mortgages themselves, (and much less, the holders of the bonds and

mortgages) but the individuals charged with the mechanical aspects of the work required to produce those bonds and mortgages: the scriveners who copy, and re-copy, and re-copy, in longhand, the requisite documents, some of them hundreds of pages long. The narrator himself makes the subject matter clear in the opening paragraph:

I am a rather elderly man. The nature of my avocations for the last thirty years has brought me into more than ordinary contact with what would seem an interesting and somewhat singular set of men, of whom as yet nothing that I know of has ever been written: — I mean the law-copyists or scriveners. I have known very many of them, professionally and privately, and if I pleased, could relate divers histories, at which good natured gentlemen might smile, and sentimental souls might weep. But I waive the biographies of all other scriveners for a few passages in the life of Bartleby, who was a scrivener the strangest I ever saw or heard of.¹⁰

The work of the “mere copying” as opposed to the “original drawing up of the legal documents” is unenviable. In one passage, the narrator explains:

It is, of course, an indispensable part of a scrivener’s business to verify the accuracy of his copy, word by word. Where there are two or more scriveners in an office, they assist each other in this examination, one reading from the copy, the other holding the original. It is a very dull, wearisome, and lethargic affair. I can readily imagine that to some sanguine temperaments it would be altogether intolerable. For example, I cannot credit that the mettlesome poet Byron would have contentedly sat down with Bartleby to examine a law document of, say, five hundred pages, closely written in a crimped hand.¹¹

It is, of course, not only Byron who would find the work intolerable. Bartleby himself eventually “prefers not” to do it. Indeed, it is hard to think of a more deadening, spirit-murdering, employment of language than the task of copying out, longhand and in quad-duplicate, hundred-

page-plus deeds of trust, mortgages and bonds. The copied word is the antithesis of the creatively spoken utterance which, at least according to any number of linguists, is the defining attribute of biological human life. The work of copying words, which themselves reduce nature to profit, might be seen to be thus doubly or even triply alienating: the natural human instinct to play creatively with language, the creative relationship of the individual to the natural world through work, and the natural world itself, are all alienated by the commodifying and tedious process of reducing, through copied words, nature to property, and property to security for loans, and loans to profits.

In a moment I will focus on the various injuries, both physical and spiritual, suggested by this sort of employment. Preliminarily, however, it is worth noting that Melville supplies at the end of the novella a telling metaphor for the very idea of frustrated, futile, impotent, and indeed “dead” communication. In an addendum to the main story, the narrator explains a rumor heard about the mysterious Bartleby, to wit, that Bartleby, prior to his employment as a scrivener, had worked in the “Dead Letter Office” in Washington D.C. The image of Bartleby sorting and destroying dead letter prompts from the narrator a curious and confused passion:

The report was this: that Bartleby had been a subordinate clerk in the Dead Letter Office at Washington, from which he had been suddenly removed by a change in the administration. When I think over this rumor I cannot adequately express the emotions which seize me. Dead letters! Does it not sound like dead men? Conceive a man by nature and misfortune prone to a pallid hopelessness: can any business seem more fitted to heighten it than that of continually handling these dead letters, and assorting them for the flames? For by the cartload they are annually burned. Sometimes from out the folded paper the pale clerk takes a ring: the finger it was meant for, perhaps, moulders in the grave; a bank note sent in swiftest charity: he whom it would relieve, nor eats nor hungers any more; pardon for those who died despairing; hope for those who died unhoping; good tidings for

those who died stifled by unrelieved calamities. On errands of life, these letters speed to death.

Ah Bartleby! Ah Humanity!¹²

The Dead Letter rumor, however, is a rumor, and an afterthought to the story. In the main, the story is about Bartleby's work as a scrivener, not a postal clerk. Now the point — the *raison d'être* — of the contract of employment between the narrator and Bartleby, of course, is to produce copied words — many of them, and without mistake. At the heart of this relationship, as at the heart of all relationships of employment, is an imperative of what might be called "free productivity." For the employee to continue to be an employee, he must be, by his own free choice, *productive*. What he must be is freely productive. Putting it differently, what it means to be an individual within these relationships is to be productive. When the employee ceases to be productive he ceases to be. It is his productivity — not his biological and certainly not his social identity — that defines his essence.

The point is underscored repeatedly by Melville's descriptions of Bartleby, the unproductive scrivener. As Bartleby becomes increasingly unproductive, he becomes increasingly, in the narrator's eyes, "cadaverous." When the narrator first employs Bartleby, he is described as "pallidly neat, pitiably respectable, [and] incurably forlorn"¹³ — but not deathly. His productivity, as noted above, is praised, and it is *praised in organic terms* as ravenous: he "gorged himself" on documents, with "no pause for digestion."¹⁴ It is only when he begins to refuse to work, that the tone of these descriptions shifts toward the macabre. When Bartleby first begins to refuse to work, he is compared by the narrator to the bust of Cicero that decoratively adorns the office.¹⁵ When he eventually refuses to leave the office, he is first compared to a millstone around the narrator's neck,¹⁶ and then later to the "last column of a ruined temple."¹⁷ By the point at which he refuses all work, he is described, and repeatedly, as cadaverous.¹⁸ Before he actually dies in the Tombs, he has become dead in the office. As his freely chosen "preference," in response to requests to produce, is "not to" he becomes organic — but dead — matter. He is of human substance, but that is all — his formal humanity is negated by his unproductivity.

What this employee becomes, when he becomes unproductive, is

nothing but a repository of organic need. He needs shelter, which he takes from the lawyer's office space, and he needs food, which he buys from his savings squirreled away in his desk cubbyhole. This neediness, coupled with his unproductivity, makes him infantile, and toward the end, the narrator does in desperation offer to take him home to simply care for him — an offer which Bartleby prefers to refuse.¹⁹ But Bartleby does not become, in the eyes of the narrator or anyone else, particularly innocent, or even animalistic. As he becomes nothing but his biological, organic needs, he becomes, rather, increasingly deathlike. To the reader, his actual biological death, freely chosen, at the end of the story, seems inevitable, and even anti-climactic.

By steadily shedding himself of them, Bartleby thus places in relief both prongs of the definition of the individual at the heart of contractual employment: free agency and productivity. Let me take them one at a time. First, as Brook Thomas has ably argued in his study of Melville's legal fiction, the *laissez faire* assumption of free agency at the heart of classical liberalism's conception of the labor contract is directly challenged by the portrayal of Bartleby and his employer, both of whom seem to be utterly constrained by the economic circumstances in which they find themselves.²⁰ In fact, although Thomas doesn't note it, the narrator *himself* remarks upon the sheer *oddity* of one of the central conceits of the picture of freedom assumed by liberalism's conception of the labor contract, to wit, the notion of a deal for labor as meaningfully manifesting "preferences" of the free individuals that enter into them. In a prescient passage which speaks directly to a striking feature of contemporary legal and economic discourse, the narrator and his employees comment on the perversity of using the verb "to prefer" in all sorts of inappropriate contexts:

"Say now that in a day or two you will begin to be a little reasonable: — say so, Bartleby."

"At present I would prefer not to be a little reasonable," was his mildly cadaverous reply.

Just then the folding-doors opened, and Nippers approached.... He overheard these final words of Bartleby.

"*Prefer not*, eh? gritted Nippers — "I'd *prefer* him, if I were you, sir," ... What is it sir, pray, that he prefers not

to do now?"

Bartleby moved not a limb.

"Mr. Nippers," said I, "I'd prefer that you would withdraw for the present."

Somehow, of late, I had got into the way of involuntarily using this word "prefer" upon all sorts of not exactly suitable occasions. And I trembled to think that my contract with the scrivener had already and seriously affected me in a mental way. And what further and deeper aberration might it not yet produce? This apprehension had not been without efficacy in determining me to summary means.

As Nippers ... was departing, Turkey ... blandly approached....

"[A]bout Bartleby, I think that if he would but prefer to take a quart of good ale every day, it would do much towards mending him, and enabling him to assist in examining his papers."

"So you have got the word, too" said I, slightly excited.

"With submission, what word, sir?" asked Turkey ...

"I would prefer to be left alone here" said Bartleby, as if offended at being mobbed in his privacy.

"*That's* the word Turkey," said I, "*that's* it."

"Oh, *prefer?*" oh, yes, — queer word. I never use it myself. But sir, as I was saying, if he would but prefer —"

"Turkey," interrupted I, "you will please withdraw."

"Oh, certainly sir, if you prefer that I should."²¹

It is not, however, only the purported free agency of the labor contract that is thrown into question by Bartleby's extreme malady. The obsession with productivity is as well. What defines the employment relationship, which is itself of course both defining and necessary to the employee's life, is production; biological and social needs are incidental, and noteworthy only as they impact upon production. Bartleby's metamorphosis highlights this in a negative sense: over the course of the story he deadens as he refuses to produce copy. But Melville also describes the process positively: the lawyer does indeed notice the temperament, the

diet, the ages, and the ambitions of all of his copyists — not only Bartleby — but he notices them distinctively in the context of their impact on their rate of production. Although engaging, humorous, sympathetically drawn, and introspective, the narrator is steadfast in his pursuit of profit through the commodified, and commodifying, word. His bantering and good natured interaction with his copyists — at least until Bartleby forces him into a crisis of conscience — is entirely directed toward that end.

A. The Injury

Bartleby's work — the job of the scrivener in the law office — is surely injurious — physically, mentally and spiritually. Yet, even left-wing critics are loathe to suggest that the injury inflicted by this sort of employment upon the bodies and minds of office workers is in any way what this story is actually about — such an interpretation seems to diminish the work, as well as ignore its peculiarities. Brook Thomas's reading, noted above, and heavily influenced by Morton Horwitz's history of the common law during the 19th century, certainly comes closest: Thomas reads "Bartleby" as largely about, and critical of, the myth of free agency in the laissez faire ideology of contract so prevalent in mid-19th century law.²² But even Thomas stops short of the most political, albeit most literal lesson one can possibly draw from this story, which is that the work of being a scrivener in a Wall Street law office is both injurious and profoundly alienating. Clearly anxious not to have his interpretation reduce Melville to the status of being an agitator for improved working conditions in offices,²³ but just as anxious to insist that the story is indeed about the alienation of labor, Thomas argues that we should understand the character Bartleby as essentially a stand-in, or representative, of an "underworld" of oppressed workers, knowledge of the existence of which both the narrator and his rich clients must quite actively repress, if they are to continue comfortably with their "snug business" on Wall Street.²⁴ By reading Bartleby as a stand-in for oppressed workers from all sorts of industries, Thomas can then read the story as containing an implicit condemnation of the handful of doctrinal developments in the common law which were contemporaneous with the story's setting, and which did indeed dramatically undermine the position of workers badly injured on the job, and correspondingly benefited the interests of capital during the

industrial revolution: most notably the fellow-servant rule,²⁵ but also, as Thomas argues, the doctrine of charity,²⁶ and abolition of the “office of equity.”²⁷ It also, of course, frees Thomas of the need to describe the work Bartleby actually does — copy words in an office — as particularly alienating, or particularly injurious (or particularly anything). His status as wage-laborer suffices to confer upon him his role as representative of the working class.

By his own account, Thomas is moved to this abstraction — Bartleby as representative of a larger class of oppressed workers — in part because of his discomfort with the constraints of the story. Most notably, Thomas seemingly agrees with his critics that there don’t seem to be any work-related injuries in Bartleby anyway, and surely no compensation which would have been barred by the fellow-servant rule.²⁸ In fact, Thomas suggests, there’s little from which Bartleby suffers that would have been compensable under *either* the more paternalistic rules of the pre-classical contracts era, or the more regulated regime of the 20th century workplace. Viewing Bartleby as a stand-in for a class of workers, of course, removes this interpretive difficulty: even if *he* doesn’t suffer from uncompensated injuries, he is a stand-in for other (more dramatically) maimed and oppressed factory workers, who clearly do suffer such injuries, and very likely would have been compensated for them, either before or after the heyday of laissez faire ideology which Thomas reads as the real target of the story. Thus, — the need to abstract: Bartleby is about wage labor, not office work.²⁹ The reading he’s left with — that Bartleby represents a class of unseen oppressed workers, knowledge of the existence of which the narrator and his capitalist rich clients must deny, to maintain their own moral equanimity — is a perfectly sensible one: there’s plenty in the story to support it. But there are at least two problems with it.

The first is simply interpretive: it denies the specificity and the detail of Melville’s narrative. I will return to this problem with Thomas’s reading in greater detail in the next section below. The second, and more fundamental problem is that the strained abstraction away from office labor to the class of laborers, in order to preserve the utility of the story as a parable of wage labor alienation, is based on a false premise, and hence is simply not necessary. The office work Bartleby is required to do is plenty injurious and alienating. There’s no need to think of it as representative of more truly harmful and oppressive labor.

What are those injuries? First of all, although not central to the action, it is certainly worth pointing out that Thomas and his critics are simply wrong in assuming that whatever suffering Bartleby and his colleagues endure, none of it can be traced to injuries which were or might be compensable by decent legal institutions. In fact, there are at least two injuries, quite physical and clearly work-related, that are referenced in the short novel, both of which might be compensable under either a paternalistic pre-laissez faire regime like the sort that pre-dated the classical era or under a “regulatory” regime like that which followed it. Thus, in describing the junior copyist, Nippers, at the beginning of the story, the narrator explains:

[His] indigestion seemed betokened in an occasional nervous testiness and grinning irritability,... and especially by a continual discontent with the height of the table where he worked. Though of a very ingenious mechanical turn, Nippers could never get this table to suit him. He put chips under it, blocks of various sorts, bits of pasteboard, and at last went so far as to attempt an exquisite adjustment by final pieces of folded blotting paper. But no invention would answer. If, for the sake of easing his back, he brought the table lid at a sharp angle well up toward his chin, and wrote there like a man using the steep roof of a Dutch house for his desk — then he declared that it stopped the circulation in his arms. If now he lowered the table to his waistbands, and stooped over it in writing, then there was a sore aching in his back. In short, the truth of the matter was, Nippers knew not what he wanted. Or, if he wanted anything, it was to be rid of a scrivener’s table altogether.³⁰

It may be that Nippers’ discomfort, as the narrator insists, is rooted in his unappealing ambition to rise above the status of being a mere scrivener, and usurp the work of the lawyer in the “original creation” of the mortgages and bonds which he can but copy. Or, it might be that his discomfort, his back pain, and the poor circulation in his arms were all quite real, and symptoms of Karpal’s Tunnel Syndrome. If so, Nippers was right — adjusting the angle and height of the scrivener’s table was as close

as he would come to resolving the problem, and minimizing this unambiguous work-related injury.

Second, when Bartleby first refuses to do any writing, the narrator intimates yet a second injury:

The next day I noticed that Bartleby did nothing but stand at his window in his dead-wall revery. Upon asking him why he did not write, he said that he had decided upon doing no more writing.

"Why, how now? What next?" exclaimed I, "do no more writing?"

"No more."

"And what is the reason?"

"Do you not see the reason yourself?"

I looked steadfastly at him, and perceived that his eyes looked dull and glazed. Instantly it occurred to me, that his unexampled diligence in copying by his dim window for the first few weeks of his stay with me might have temporarily impaired his vision.

* * * * *

[A]dded days went by. Whether Bartleby's eyes improved or not, I could not say.... At all events, he would do no more copying.³¹

There is no shortage of work-related injuries in this Wall Street law office. There is accordingly no need to extrapolate from the office to the factory to read Bartleby as an indictment of the uncompensated injuries occasioned by wage labor in a laissez faire economy.

Of course, Thomas and his critics are right to suspect that the crisis of conscience which ultimately is the result of Bartleby's presence in this law office is not a function of these uncompensated work-related injuries. Thomas is wrong, though, to conclude from this that Bartleby must therefore be representative of a class of more seriously oppressed factory workers. Rather, what Bartleby's unproductive presence brings to the fore is the injurious nature of the work *itself*, and *that* injury Thomas's reading

of Bartleby as a working class representative curiously masks. Bartleby forces upon us direct knowledge of the unpalatability of the choice the labor contract has imposed upon *him*, and it is a choice the unpalatability of which would certainly survive the transition away from the laissez faire assumptions of the classical era to the more regulated work environment of the 20th century: Bartleby must either be forcibly removed from the premises, in which case he will apparently starve, or he must be productive. The first choice starkly reveals the barbarism of the disingenuously equal and free contract of labor: the choice to work or not work is not much of a choice, where the alternative to labor is death. Again, where the essence of the individual is his productivity, rather than his biological or social self, his non-productivity reduces him to biological need, and if his wage is his only means of satiating those needs, then to death.

But the second choice as well — the choice of free productivity in the office — is also unpalatable, and this unpalatability, no less than its barbarous alternative, is, at least in part, the subject matter of this most peculiar tale. Again — the work *itself* is injurious. Rather than burning “dead letters” which were on “missions of life,” as he had done in the Dead Letter Office, Bartleby, as a scrivener, produces dead letters on a mission of death — the commodification, through the mechanical production of deeds, mortgages, and “rich men’s” trusts, of language, work, property, nature, and life itself. Through a series of metaphors, Melville makes clear that while the alternative is literal death, the work required of this scrivener is indeed a kind of “living death”: the work *preserves* biological life, but without *sustaining* it. The office itself, the narrator tells us, resembles just such a preservative container, more than a site for life:

My chambers were upstairs at No ——— Wall Street. At one end they looked upon the white wall of the interior of a spacious sky-light shaft, penetrating the building from top to bottom. This view... [was] deficient in what landscape painters call “life.” But if so, the view from the other end of my chambers offered, at least, a contrast, if nothing more. In that direction my windows commanded an unobstructed view of a lofty brick wall, black by age and everlasting shade; which wall... for the benefit of all near-sighted spectators, was pushed up to within ten

feet of my window panes. Owing to the great height of the surrounding buildings, and my chambers being on the second floor, the interval between this wall and mine not a little resembled a huge square cistern.³²

The space in this office assigned to Bartleby is even more coffin-like:

I resolved to assign Bartleby a corner by the folding-doors.... I placed his desk close up to a small side-window in that part of the room, a window which originally had afforded a lateral view of certain grimy back-yards and bricks, but which, owing to subsequent erections, commanded at present no view at all, though it gave some light. Within three feet of the panes was a wall, and the light came down from far above, between two lofty buildings, as from a very small opening in a dome. Still further to a satisfactory arrangement, I procured a high green folding screen, which might entirely isolate Bartleby from my sight, though not remove him from my voice.³³

The brick wall that bars any further view out the windows of the office is routinely referred to by the narrator as the “dead wall,” particularly when it is the object of Bartleby’s gaze. The confining, coffin-like architecture of the office is finally echoed in the end, in the narrator’s description of the “Tombs,” or prison, to which Bartleby is dispatched:

Being under no disgraceful charge, and quite serene and harmless in all his ways, they had permitted him freely to wander about the prison, and especially in the inclosed grass-platted yards thereof. And so I found him there, standing all alone in the quietest of the yards, his face toward a high wall — while all around, from the narrow slits of the jail windows, I thought I saw peering out upon him the eyes of murderers and thieves.³⁴

Bartleby’s free choice, then, is between imprisonment as a vagrant or biological death in the elements, or sustained, preserved life in a cistern in which he produces copied words which both describe and themselves constitute the properties and profits of others. It is a barbaric set of

options. Those who sanely and rationally choose to produce dead letters in a coffin like office, rather than risk death or imprisonment, do so at the cost of a tremendous amount of suffering. "Bartleby" makes the true nature of the choice, and hence the suffering it entails, starkly visible.

B. Legitimation

It has for some time now been the contention of the critical legal studies movement that law perpetuates hierarchical social and economic relations, and the suffering they cause, in at least two ways: first, by brute force, and second, by influencing the consciousness of both the empowered and the weak. Melville's "Bartleby" explores both. First, the narrator gives voice to the limits of Bartleby's *rights*, which, when reached, justify the law's forceful intervention. Either the possession of private property, or the provision of labor, confer legal rights. In the absence of either, there simply is no legally recognized entitlement to shelter:

"Will you, or will you not, quit me?" I now demanded in sudden passion, advancing close to him.

"I would prefer *not* to quit you," he replied, gently emphasizing the *not*.

"What earthly right have you to stay here? Do you pay any rent? Do you pay my taxes? Or is this property yours?"

He answered nothing.

"Are you ready to go on and write now? Are your eyes recovered? Could you copy a small paper for me this morning? or help examine a few lines? or step round to the Post Office? In a word, will you do any thing at all, to give a colouring to your refusal to depart the premises?"³⁵

Without a legal right to have basic needs met, the individual is left to the vagaries of private charity, or to fend for himself against nature. It is obviously by virtue of that harsh and immediate consequence of positive law that the inequalities in labor contracts self-perpetuate. Law quite literally enforces the inequalities engendered by these economic exchanges.

The enforcement of positive law, however, although necessary, is not sufficient to account for the phenomenal degree of compliance with law

that distinguishes liberal legal societies, or at least it has been the distinguishing and persistent claim of the Gramscian wing of the critical legal studies movement to so maintain. Rather, what accompanies the application of force, and together sufficiently accounts for compliance, is the creation, through rhetoric, of a consciousness, or a frame of mind, or a set of beliefs, within which the weak feel that they are freely complying, and therefore that their choices manifest and evidence their autonomy, and the strong feel justified in their positions of privilege. The complicity of law in the creation of this state of consciousness is partial and indirect. The narrative, expository, normative, rhetorical part of law — not the guns and prisons, but the words, the holdings, and the stories — is but a part of a larger cultural apparatus. It is that cultural apparatus which overwhelmingly and at times unwittingly constructs individuality and individual consciousness in such a way as to render compliance seemingly natural and free, on the part of the weak, and morally unproblematic, on the part of the strong.

Melville's "Bartleby" dramatizes both ends of this process of legitimation. First, as suggested above, by the prescient insistent use of the verb *prefer*, Bartleby's suicide is marked as consensual, just as is the choice of the other copyists to produce rather than starve. To *prefer* is to express a choice, and to express a choice is to do so freely; hence both Bartleby and his colleagues' fates are chosen rather than duressed. In fact, Melville is insistent that *all we know* of Bartleby is that he makes these odd choices; we are on several occasions reminded that the narrator lacks all knowledge of Bartleby's history.

The protagonist of this story, however, is clearly not the enigmatic Bartleby, of whom we know truly nothing other than that he prefers not to produce (until the end, when we learn of his prior work in the Dead Letter Office). Rather, the protagonist is the narrator, and of the narrator, we learn a great deal. This story of Wall Street is at bottom a story of the self-justification of privilege within a liberal market economy. In the absence of any legal claim to entitlement, Bartleby is at the mercy of the narrator's charity. *Whatever* course he takes, the narrator must deal with Bartleby in a non-contractual, and therefore unscripted, manner; this above all else prudent lawyer must somehow come to grips with a non-productive, seemingly irrational and eventually quite disruptive presence in his law office. The narrator must somehow justify either his decision to

support Bartleby in spite of his non-productivity, or justify his decision to abandon him.

Over the course of the novella, the narrator explores a number of such justifications, and by so doing eventually develops a quite intricate “empathic calculus” to suit the decision of the moment. Those various self-justifications constitute, collectively, a compelling and even exhaustive account of the many ways in which economic privilege is still squared, today, with utterly visible and widespread economic deprivation. Thus, when the narrator first resolves to indulge Bartleby’s eccentricities (at a point when Bartleby had refused only some, but not all, work, so that his crime at this point was insubordination rather than total non-productivity) the narrator introduces his first egoistic account of his own charitable impulse:

I regarded Bartleby and his ways. Poor fellow! thought I, he means no mischief; it is plain he intends no insolence; his aspect sufficiently evinces that his eccentricities are involuntary. He is useful to me. I can get along with him. If I turn him away the chances are he will fall in with some less indulgent employer, and then he will be rudely treated and perhaps driven forth miserably to starve. Yes. Here I can cheaply purchase a delicious self-approval. To befriend Bartleby; to humour him in his strange wilfulness, will cost me little or nothing, while I lay up in my soul what will eventually prove a sweet morsel for my conscience.³⁶

Later in the story, as Bartleby’s “eccentricities” become more trying, the narrator reintroduces his prudential account of charity, but this time as a means of checking his own anger:

But when this old Adam of resentment rose in me and tempted me concerning Bartleby, I grappled him and threw him. How? Why, simply by recalling the divine injunction: “A new commandment give I unto you, that ye love one another.” Yes, this it was that saved me. Aside from higher considerations, charity often operates as a vastly wise and prudent principle — a great safeguard to

its possessor. Men have committed murder for jealousy's sake, and anger's sake, and hatred's sake, and selfishness' sake, and spiritual pride's sake, but no man that ever I heard of, ever committed a diabolical murder for sweet charity's sake. Mere self-interest, then, if no better motive can be enlisted, should, especially with high-tempered men, prompt all beings to charity and philanthropy. At any rate, upon the occasion in question, I strove to drown my exasperated feelings toward the scrivener by benevolently construing his conduct. Poor fellow, poor fellow! thought I, he doesn't mean any thing; and besides, he has seen hard times, and ought to be indulged.³⁷

There are, however, limits to sympathy, and limits upon the charitable impulse, particularly in the public world of work, rather than the private world of home or worship. The first such limit, of course, is professional appearances. The narrator is, above all else, he tells us in the first paragraph, an eminently *safe* man, who "from his youth upward, has been filled with a profound conviction that the easiest way of life is the best."³⁸ And, what this safe man of prudence comes to understand is that his business will suffer, and badly, if he continues to indulge Bartleby's unproductive presence. It is this inescapable fact that finally impresses upon the narrator's consciousness the need to restore "normalcy" in his office, and eventually spurs him on to more definitive action:

I believe that this wise and blessed frame of mind would have continued with me had it not been for the unsolicited and uncharitable remarks obtruded upon me by my professional friends who visited the rooms. But thus it often is, that the constant friction of illiberal minds wears out at last the best resolves of the more generous. Though to be sure, when I reflected upon it, it was not strange that people entering my office should be struck by the peculiar aspect of the unaccountable Bartleby, and so be tempted to throw out some sinister observations concerning him.³⁹

Perhaps more ominously, the narrator explains, even apart from pru-

dential concerns of business, there is a “prudential” limit to the sympathetic response itself. We quit sympathizing with those in need of our charity where the pain of doing so exceeds the “morsel of self approval” we might glean from the charitable act itself. And, we reach that point rather quickly when it becomes clear that the object of our charitable impulse is failing or refusing to respond in the appropriate and hoped for way:

Revolving all these things, ...a prudential feeling began to steal over me. My first emotions had been those of pure melancholy and sincerest pity; but just in proportion as the forlornness of Bartleby grew and grew to my imagination, did that same melancholy merge into fear, that pity into repulsion. So true it is, and so terrible too, that up to a certain point the thought or sight of misery enlists our best affections; but, in certain special cases, beyond that point it does not. They err who would assert that invariably this is owing to the inherent selfishness of the human heart. It rather proceeds from a certain hopelessness of remedying excessive and organic ill. To a sensitive being, pity is not seldom pain. And when at last it is perceived that such pity cannot lead to effectual succor, common sense bids the soul be rid of it. What I saw that morning persuaded me that the scrivener was the victim of innate and incurable disorder. I might give alms to his body; but his body did not pain him; it was his soul that suffered, and his soul I could not reach.⁴⁰

Having resolved that Bartleby's needs were spiritual rather than physical, the narrator more readily reaches the prudential conclusion that neither moral nor divine law precludes him from barring Bartleby from his office.

The constraint on charity that proves decisive, however, in Bartleby's case, is neither economic nor psychological prudence, but, rather, the narrator's consciousness of his own legal entitlement. It is that consciousness — a concern that his legal property is threatened by his charitable impulse — that cabins his impulse toward charity, and propels him toward his repulsion of Bartleby, and it is in this sense that the story “unmasks” the role of law and legal rhetoric in the construction of a quite specific con-

sciousness that legitimates and masks human suffering. In the pivotal psychic action of the story, the narrator makes clear that although the meek may indeed someday inherit the earth, he, the narrator, has neither the desire nor the intention of allowing them to inherit his part of it. Ultimately, it is his own felt entitlement to property that fully checks, and trumps, his impulse to charity:

[A]s the idea came upon me of [Bartleby's] ... possibly turning out a long-lived man, and keeping occupying my chambers, and denying my authority; and perplexing my visitors; and scandalizing my professional reputation; and casting a general gloom over the premises; keeping soul and body together to the last upon his savings (for doubtless he spent but half a dime a day), and in the end perhaps outlive me, and claim possession of my office by right of his perpetual occupancy; as all these dark anticipations crowded upon me more and more, and my friends continually intruded their relentless remarks upon the apparition in my room, a great change was wrought in me. I resolved to gather all my faculties together, and forever rid me of this intolerable incubus.⁴¹

What he could not do, however, was force Bartleby from the premises. He simply *could* not, morally, do something so barbaric:

What shall I do? What ought I to do? What does conscience say I should do with this man, or rather ghost? Rid myself of him, I must; go, he shall. But how? You will not thrust him, the poor, pale, passive mortal, — you will not thrust such a helpless creature out of your door? you will not dishonor yourself by such cruelty? No, I will not I cannot do that.⁴²

By force of this reasoning, the narrator is led to his bizarre, somewhat pathetic, absurd, but utterly legalistic conclusion: he moves his offices, leaving Bartleby on the premises, since he can't bring himself to forcibly eject Bartleby from the office. Shortly thereafter, Bartleby is taken to the Tombs, where, after preferring not to eat, he dies.

What to make of this peculiar story? Richard Weisberg, surely the

foremost contemporary Melville authority attuned to the complex legal and jurisprudential themes so often explored in Melville's fiction, compares "Bartleby" to *Billy Budd, Sailor*.⁴³ In Bartleby, in Weisberg's judgment, Melville presents simply a gentler rendition of the legalistic themes explored in more depth in the later story: Bartleby, no less than Billy Budd, then, if we spell out the extrapolation, tells the story of a wordy lawyer's disingenuous, subtle, and resentful persecution, and ultimately destruction, of a non-verbal, paganistic man of paganistic nature. But even if one accepts Weisberg's controversial reading of Budd,⁴⁴ there's something amiss in extending this theme to embrace Bartleby as well. *Unlike* the character of Captain Vere in *Billy Budd, Sailor*, the lawyer in this story of Wall Street is for the most part a sympathetically drawn character. He is insightful, somewhat self-deprecatory, generous to his employees, for the most part charitable to Bartleby, and charming. He does not have the asocial, bookish, twisted, complicated psyche of the "starry-eyed Vere." Unlike Vere, he is good company. He does not seem to be filled with *ressentiment*. Nor does he order Bartleby executed, or anything remotely close: the worst he does is to stand on his rights, and he does that, ultimately, only after first offering to care for Bartleby in his own home. And, to continue the contrast, unlike the character of Billy Budd, Bartleby does not exude an appealing childlike innocence, or an instinctive talent for peace-making, or a natural love of his fellows. Perhaps most tellingly, and in the sharpest contrast to "Baby Budd," Bartleby is anything but physically beautiful. He is deathly and pale, not joyful and radiant. We are more drawn to the narrator of this tale than we are to Vere, and we are most assuredly more repelled by the character of Bartleby than by the portrait of Budd. Whatever this story is about, it does not seem to be simply a rehearsal, or an echo, of the themes of *ressentiment* and legal perversion so thoroughly explored in *Billy Budd, Sailor*.

Brook Thomas' reading, discussed above, seems more convincing: Thomas reads Bartleby as in some way about the existence of an alienated work force brought on by the industrial revolution, and the complicity of law, and particularly the common law of contracts and torts, in legitimating that alienation. But like Weisberg's, Thomas's reading also requires him to depart from the narrative storyline itself. As noted above, Thomas reads the character of Bartleby as a *stand-in*, or representative, of the existence of an alienated workforce, rather than more simply reading

the character as a member of it:

Allotted machine-like roles, neither the lawyer nor the scrivener is a free agent. Nevertheless, they receive unequal rewards for fulfilling their tasks. Bartleby's job implicitly links him to the world of exploited workers produced by the same market system that allows the lawyer to live a comfortable life serving the rich. Thus, another possible reason for the lawyer's keeping Bartleby out of sight is that he is trying to repress his awareness of the existence of this repressed labor force....

Bartleby shows that the underworld exists within the world of Wall Street itself. To be sure, that world is present in the story before the arrival of Bartleby, in the person of the lawyer's three other employees, but their ultimate submissiveness allows the lawyer to continue to repress his awareness of its existence... Bartleby's eccentricity does not. Hauntingly present, Bartleby becomes a bizarre representative of the existence of an underworld of workers that the lawyer and his class tried to ignore.⁴⁵

Thomas goes on to argue that the story should be understood as, in part, a critique of the displacement of paternalism with a laissez faire tilt in torts and contracts, as evidenced by such 19th century inventions as the fellow servant rule. I have already discussed one problem, also noted by Thomas's critics, with this reading: the actual physical injuries Bartleby sustains (if any) have nothing to do with the fellow-servant rule, and the more serious psychic injury he endures is surely not the sort of injury that might have been compensated under either a more paternalistic understanding of master-servant relations or a more regulatory regime governing the workplace.⁴⁶ The second problem, however, less noted by Thomas's critics, is that by making Bartleby a stand-in, essentially, for factory workers who *were* maimed, killed, and grotesquely uncompensated by 19th century tort and contract law, Thomas gives the story straightforward thematic content, but in so doing has lost sight of its particularity: its focus on the work of copying deeds and trust agreements in a Wall Street legal office in the middle of the 19th century. If Melville had wanted to write about oppressed factory workers, he surely could have, and in

fact did, in a story written right after *Bartleby*, entitled “The Paradise of Bachelors and the Tartarus of Maids.” In that story Melville does indeed, quite vividly, contrast the luxurious life of lawyers with the hellish conditions of the factories that produce the paper on which the lawyers rely, and the women who labor in those factories. But that story is not this one.

By combining, in a sense, parts of Thomas’s reading with Weisberg’s (implicit) one, we reach, I think, an understanding of the story stronger than either standing alone. Weisberg is surely right that this story, like *Billy Budd, Sailor* is about the psyche of the lawyer, and Thomas is surely right that the story is in some sense about the exploitation of workers. But we don’t need to view the “psychic story” as a story of *ressentiment*, and we don’t need to view the “exploitation story” as a story about the effect of the fellow-servant rule on injured factory workers. In fact to do so renders *Bartleby* peculiarly redundant: Melville explores the theme of *ressentiment* in *Billy Budd* and, as noted above, explores the exploitation of factory workers in “The Paradise of Bachelors and the Tartarus of Maids.” Rather, the psychic story told in *Bartleby* is the story of *legitimation*, not *ressentiment*. What is driving the narrator in *Bartleby* is not *ressentiment* — a jealous, wordy urge to conquer and displace natural paganistic heroism — but a need to legitimate his own wealth and position of comparative privilege. And, the story of exploitation told in *Bartleby* is the story of the exploitation of office workers — workers doing the mechanical work of producing copied words which themselves mechanically convert nature into property and profit. There is no need to view the office worker as a stand-in for the maimed factory worker, injured by a machine for which, under the auspices of the fellow-servant rule, the employer need not take responsibility. Office work is the subject matter of the story, and the subject of its implicit political critique.

Such a reading, I think, preserves the integrity of the narrative, and also explains the modern reader’s affective attachment and repulsions to the characters in the story. The narrator of this story is simply not as evil, or as twisted, or as psychically damaged, or, ultimately, as destructive, as Captain Vere. The “story” of legitimation, unlike the story of *ressentiment*, is not a story of the viciousness and moral hypocrisy of men of letters. In short, we like the narrator of this story — even if he does do a “snug business with rich men’s bonds and mortgages” — because he’s really *not* such a bad guy. Likewise, *Bartleby* is not an exploited, maimed victimized fac-

tory worker, nor does he “represent” them. He is who he is — an office worker who refuses to be productive, eventually refuses even to accept charity, and in short refuses to behave rationally. Our exasperation with him, like the narrator’s own, is not a pale reflection of the factory owner’s exploitative failure, sanctioned by the law, to take responsibility for the injuries caused by his machines. It is an entirely understandable frustration over the refusal of someone to play according to a social and political script we’ve all come to accept as relatively unproblematic, and in any event, more or less inevitable.

To conclude by stating the obvious — the professional, legal, educated reader of this story likes and identifies with this narrator — whether or not he identifies with Vere — for the simple reason that he so resembles us. We like him because we are like him. Whether or not “we” — the professional or educated readers of these stories — suffer from the *ressentiment* that afflicts Vere, we all legitimate our own privilege, and we all do so, like the narrator, in part by repressing our awareness of Bartleby’s physicality, and his need for biological sustenance. There are elements of Bartleby’s obstinate refusal to produce, to *help himself*, to stand on his own, to even accept help from others, in every panhandler, homeless person, drug addict, chronically underemployed, and mentally deranged person we pass on the street. Their suffering is not a stand-in for the suffering of more economically exploited factory workers; their suffering is their own. And we legitimate it, with the same psychic stratagems employed by the narrator: we ascribe to them either free agency or an “incurable malady,” we insist that the cause of their illness is spiritual rather than physical need, we limit our felt capacity for empathy, and most of all we police the moral entitlements of the meek by reference to the legal entitlements of the propertied, including our own. Whatever the meek might inherit, they won’t inherit *mine*, and my charitable reactions are cabined accordingly. All of these stratagems feel morally unproblematic when we encounter them in this narrative because they feel so utterly familiar; that he employs them makes the narrator nothing worse than ordinary. Our identification with and sympathy for the narrator is by no means evidence of our own mendacity.

It *is*, however, evidence of our own complicity, and it is complicity in a system which *vigorously* legitimates the suffering, and exploitation, of wage workers, not only in factories and on farms, but in offices as well.

For while the narrator in *Bartleby* is no villain — as Thomas notes, he is no Dickensian evil capitalist — he is also no hero. He does indeed, as Thomas insists, lack agency — thereby precluding either heroism or villainy. His resolution of his moral dilemma — to remove his office from Bartleby, since he can't remove Bartleby from his office — is truly comical: one pictures a small-bodied man, empowered by law but lacking in physical strength, literally running down Wall Street, leading a small horde of packers and movers carrying furniture, all so as to escape the unappealing need to remove an oppressive mentally ill but utterly harmless individual from an office building. He also lacks imagination: he can't fathom alternative solutions to his problems.

But what he most lacks, of course, is critical distance from the underlying economic and political causes of not only Bartleby's malady, but his own as well. He cannot question the deeper premises of a system which led him and Bartleby to their point of crisis. He can more easily abandon Bartleby than his own consciousness, and his consciousness, structured and constrained by legal entitlements, is what (penultimately) points him away from common humanity — in the form not only of Bartleby's need, but also in the form of his own impulse to care.

II. A Jury of Her Peers

"A Jury of Her Peers," or "Trifles," as it was alternatively titled, tells the story of the investigation of the murder of a farmer, killed in his sleep by a rope around his neck, in the nineteen-teens. The farmer's wife is the chief suspect. The story opens as the murder is being investigated inside the home, from which the wife has been removed, by the sheriff and the prosecutor. The men have brought two women with them: the sheriff's wife, Mrs. Peters, and the victim and suspect's neighbor, Mrs. Hale. These two women sit in the kitchen and talk while their husbands examine the rest of the house for some evidence that might supply a motive with which to inculcate the wife in her husband's murder. The women's conversation and actions in the kitchen constitute the entire action of the story, and the dialogue of the play.

While sitting in the kitchen the women discover precisely the evidence of motive the men are in search of. Amidst the various "trifles" contained in a kitchen which the men, in their condescending dismissal of

women's concerns, overlook, the women find what is for them clear evidence of a severely disturbed and abusive relationship: the kitchen is in disarray, the table half cleaned, quilting blocks are oddly and badly sewn — all of which, they conclude, evidence domestic work abruptly interrupted. They eventually happen upon the clinching piece of evidence: a hidden songbird, who had clearly been wrenched from its cage, and strangled to death. The women reason that the strangled bird had been both treasured by the desperately lonely farm wife for its companionship and killed at the hands of her husband, and must have been the proverbial last straw, prompting the wife to kill her abusive husband.

They also, however, through the course of their conversation, realize that they each (for somewhat different reasons) strongly sympathize and identify with the farm wife. The very evidence which, in their husbands' eyes, would inculcate the wife — providing the decisive and necessary evidence of motive — the women view as exculpatory. This metaphorical jury of one's peers metaphorically acquits the farm wife of the murder of her husband, finding the homicide either justified or excused. In a climactic moment of political solidarity with the farm wife, they hide the evidence, insuring that she will not be brought to trial.

Like Melville's "Bartleby," Glaspell's "A Jury of Her Peers" can be read as a study of the societal and legal legitimization of human suffering — legitimization of the suffering caused not, in this case, by the institution of wage labor, but rather by the institution of marriage. The story is structurally parallel to "Bartleby" in a number of respects. In "Jury" as in "Bartleby," we are given an evocative description of the injury and suffering brought on by a social institution, which is itself defined by law as well as custom. Both stories provide an account of the ways in which law legitimates that suffering. Unlike "Bartleby," however, which gives us an inside look at the legitimated consciousness of the privileged, "A Jury of Her Peers" provides, through the wives' conversation, an examination of the legitimated consciousness of the oppressed. What "Jury" provides, ultimately, is an account of the ways in which political action between oppressed women is frustrated — in large part by the construction of individuality implicit in the role of the wife.

A. The Injury

This novella — which for any number of obvious reasons has become canonical within the feminist legal community — contains, among much else, a particular and highly critical portrayal of the institution of marriage. Through marriage, the story suggests, young girls are separated from their communities and families of nurturance, and isolated within heterosexual relationships in which they are expected to altruistically sacrifice their own needs and subordinate their own wills, and which are often — typically? — far less emotionally nourishing than the communities from which they came. That lack — the absence of emotional nourishment — is severely injurious. Whether or not a marriage is physically abusive, a marriage in which a woman's need for intimacy and emotional companionship is not met, and which simultaneously severs her from sources of emotional nourishment, is profoundly damaging. It entails immense amounts of human suffering, most or all of which, like the suffering incident to wage labor, goes entirely unnoticed, unrecognized, and uncompensated by the law.

The injury occasioned by such a marriage in Minnie Foster's life was extreme. Minnie Foster, the women's conversation in the kitchen makes clear, moved from girlhood to an early marriage to an incommunicative, cold man, and more generally, from a life of delight and pleasure to a life dominated by loneliness and ugliness. It is that loneliness and ugliness, more than any other feature of the marriage, to which Mrs. Hale and Mrs. Peters return again and again, in their attempt to make sense of the apparent murder that faces them. Thus, in the opening paragraphs, the narrator explains that the house itself was lonesome:

[T]hey had gone up a little hill and could see the Wright place now, and seeing it did not make her feel like talking. It looked very lonesome this cold March morning. It had always been a lonesome looking place. It was down in a hollow, and the poplar trees around it were lonesome-looking trees.⁴⁷

The lonesomeness endured by Minnie Foster in this house (aggravated by her husband's refusal to install a telephone), was further underscored by the ugliness and hardness of life in a home pressed for cash, and

without light, liveliness, or delight. Mrs. Hale, the neighbor, comments:

“Wright was close!” she exclaimed, holding up a shabby black skirt that bore the marks of much making over. “I think maybe that’s why she kept so much to herself. I s’pose she felt she couldn’t do her part; and then, you don’t enjoy things when you feel shabby. She used to wear pretty clothes and be lively — when she was Minnie Foster, one of the town girls, singing in the choir. But that — oh, that was twenty years ago.”⁴⁸

In a similar mode, she comments on the stove:

How’d you like to cook on this? — pointing with the poker to the broken lining. She opened the oven door and started to express her opinion of the oven; but she was swept into her own thoughts, thinking of what it would mean, year after year, to have that stove to wrestle with. The thought of Minnie Foster trying to bake in that oven — and the thought of her never going over to see Minnie Foster —

She was startled by hearing Mrs. Peters say: “A person gets discouraged — and loses heart.”⁴⁹

The absence of objects of beauty in such a life is an assault on the senses, and an injury itself. In putting together sewing materials to take to Minnie Foster, Mrs. Hale comments:

“Here’s some red,” said Mrs. Hale, bringing out a roll of cloth. Underneath that was a box. “Here, maybe her scissors are in here — and her things.” She held it up. “What a pretty box! I’ll warrant that was something she had a long time ago — when she was a girl.”⁵⁰

The grimness of this life — surely bearable if undertaken within a companionable marriage — became intolerable when coupled with her husband’s personality and character. The women repeatedly make the point by contrasting Minnie’s life before and after her marriage:

“Not having children makes less work,” mused Mrs.

Hale.... “but it makes a quiet house — and Wright out to work all day — and no company when he did come in. Did you know John Wright, Mrs. Peters?”

Not to know him. I’ve seen him in town. They say he was a good man.

“Yes — good... he didn’t drink, and kept his word as well as most, I guess, and paid his debts. But he was a hard man, Mrs. Peters. Just to pass the time of day with him —.” She stopped, shivered a little. “Like a raw wind that gets to the bone.” Her eyes fell upon the cage on the table before her, and she added, almost bitterly: “I should think she would’ve wanted a bird!”...

“She — come to think of it, she was kind of like a bird herself. Real sweet and pretty, but kind of timid and — fluttery. How-she-did-change.”⁵¹

In contemplating the significance of the strangled songbird, both Hale and Peters eventually identify and sympathize with the injury occasioned by this forced, quiet, loneliness:

Mrs. Hale had not moved. “If there had been years and years of — nothing, then a bird to sing to you, it would be awful — still — after the bird was still...”

“I know what stillness is,” [Mrs. Peters] said, in a queer, monotonous voice. “When we homesteaded in Dakota, and my first baby died — after he was two years old — and me with no other then — ”...

“I wish you’d seen Minnie Foster,” [Mrs. Hale responded]... “when she wore a white dress with blue ribbons, and stood up there in the choir and sang.”⁵²

What, exactly, is Minnie Foster’s injury? In a rich and informative historical analysis, Marina Angel argues, persuasively, that Susan Glaspell was moved to write *Jury* as a result of a trial on which she had reported as a journalist, which involved the murder of a husband by a physically abused wife.⁵³ In an interesting historical inversion, the dominant issue of the trial — and in this respect, apparently, the trial was typical — concerned, Angel shows, the prosecutor’s attempts to *introduce* evidence of

that abuse so as to provide precisely what was missing in the fictional story: evidence of motive. The defendant and loyal family members tried just as strenuously to keep evidence of the abusive quality of the marriage *out* — the result being a curious reversal of contemporary tactics. The defendant and witnesses would offer sometimes perjured testimony of the *contentedness* of the marriage — to support the inference that the murder must have been committed by a third party. The prosecutor would try to show the abuse.⁵⁴ The defendant, and her witnesses, were thus involved in precisely the tactics employed by Mrs. Hale and Mrs. Peters: manipulation and destruction of evidence so as to lead to the false inference at trial that the wife lacked a motive for her husband's murder. Angel's historical context provides an important clue to Glaspell's intended meaning. Clearly, Glaspell, as a journalist and feminist, was taken by this profoundly unjust alignment of tactic and end result: to achieve the right result, the trial had to be manipulated, illegally, so as to underscore the legitimacy of the institution responsible for the woman's suffering. An abused woman had to aggressively deny her own abuse — she had to wrongly claim she was happily married — in order to win a just result. This is, of course, legitimation with a vengeance. Against this historical backdrop, "A Jury of Her Peers" can indeed be seamlessly read as a straightforward indictment of a score of sexist and misogynist doctrines of law, all of which Angel skillfully lays out. Obviously, it is an indictment of the exclusion of women from juries and voting booths (Glaspell was an active suffragist). But just as clearly it is an indictment of the system's utter hypocrisy: remember, at the same time women were routinely prosecuted and convicted for murdering violently abusive husbands, husbands were just as routinely *released* — with no criminal charge whatsoever — for murdering adulterous wives. And, just as "Bartleby" can be read, and Thomas so reads it, as an indictment of the law's failure to incorporate ameliorative doctrines (such as workers' comp) to remove the harsh edges of wage labor, so "Jury" can be read, and Angel so reads it, as an indictment of the law's failure to incorporate ameliorative doctrines (such as battered spouse syndrome) to mitigate the harshness of patriarchy. As Bartleby can be read as a "stand-in" for the more *truly* oppressed worker, so Minnie can be taken as a "stand-in" for the more profoundly injured battered spouse. And — it is worth noting — Angel has considerably more historical evidence for her abstraction than Thomas has for his:

Glaspell really *did* report on, and dwell on, *precisely* these cases — cases involving what we would today recognize, and “class”ify as, battered women who kill. By reading the fictional Minnie as a stand-in for the historically real battered women who killed, the story can be given seamless thematic content. On this reading, the evidence Hale and Peters hide is evidence of the violent *abuse* of Minnie Foster by her husband. That is the injury she sustained, evidence of which should have exculpated and instead it inculpated. Such a trial, and such a system, in which evidence of violent abuse disserves rather than serves the interest of the woman who kills so as to defend herself against it, quite aggressively, and bald-facedly, legitimates that violence, and directly legitimates, and masks, the inutterable amounts of human suffering it causes. Such a system is aggressively out of line with fundamental norms of justice, and this story’s dramatic action reveals it as such.

There is, however, a problem with Angel’s reading, and it parallels the problem noted above with Thomas’s: it is curiously at odds with the facts of the story. The women in the kitchen never explicitly conclude that Minnie Foster is violently abused. They never even suggest it. We have no more evidence that she has been physically abused than we have of Bartleby having been maimed by factory machinery. Again, it is only by reading her as a stand-in — a representative — that we can make sense of this story as about the sorry legal predicament of battered women who killed their abusers at the turn of the century.

But why make this abstraction? Minnie Foster’s *own* injury is described, repeatedly, and convincingly: she’s *lonely*. She’s isolated. She has no light, liveliness, loveliness, delight, conversation, or companionship in her life, and that is enough to create a living hell. In fact, she is enduring a living death in her farmhouse, no less than Bartleby and his co-scriveners are enduring a living death at their desks in their work cubbies. Her emotional needs for intimacy are as trampled upon by this man, and this patriarchal regime that produced him, as Bartleby’s physical needs for shelter and food are trampled by laissez faire capitalism. We don’t need to view Minnie as a stand-in for battered women, any more than we need read Bartleby as a stand-in for maimed factory workers. The injury the story actually depicts — the utter, lonely isolation of an emotionally dead marriage — is bad enough. It is their sympathy for and understanding of the sufferance of *that* injury, I think, which leads Mrs.

Hale and Mrs. Peters to hide evidence of it. And, it is the reader's sympathy and understanding of it as well, furthermore, which lead us to believe, at least for a moment, that perhaps they were right to do so.

At any rate, if we at least permit an alternative — and more literal — reading of this story as being not about the physically abused wife, but about the emotional and psychic injury of living in a marriage that is empty of emotional succor, a quite different set of meanings emerge. The story is not — if we view the injury as emotional rather than physical — simply a prescient tract for incorporation of a battered spouse syndrome defense into the criminal law, or even more broadly, the refusal of the legal system to amend itself to incorporate perspectives distinctive to women's lives, and thus render it more just. What it is about is the injury done to women through the rending of their emotional attachments to their communities — largely female — of origin, and of friendships, and the displacement of those communities with the too-often isolating, cold, and non-sustaining relationship of heterosexual marriage. And although the story is unambiguously about *law*, it is not simply about the law's failures to incorporate doctrines that would mitigate its harshness in dealing with the extreme injuries sustained within these marriages by battered women who kill. It is, rather, as I will argue below, about the complicity of law in constructing the consciousness of privilege and deprivation that render such suffering invisible.

B. The Legitimation

How, then, is the suffering within abusive marriages, whether the abuse is emotional or physical, legitimated? Partly, of course, it is legitimated by brute legal force: a wife who rebels against this suffering by killing her husband will be charged with murder, and evidence of his abusiveness against her — even if violent, at the time of this story — most assuredly will be inculpatory evidence of motive. If Marina Angel is right, then the women in this story took an action which at the time was not unheard of: family and friends of women accused of killing their husbands often conspired among themselves to keep evidence of the abusive character of the slain spouse out of the trial. Such evidence would help, not hurt, the prosecution by supplying a motive. Likewise, the exclusion of women from juries quite brutally and forcibly legitimated the exclusion

from the public consciousness of the awareness of the obvious fact that constant abuse, belittlement, and condescension, can indeed drive someone to kill. Exclusion of women from juries and from public life in general barred from public consciousness awareness of the overwhelming hypocrisy in allowing knowledge of a wife's adultery to constitute, in any number of jurisdictions, a full defense to a husband's murder of his wife, while even physical abuse of the wife by the husband constituted inculpatory evidence of motive, rather than exculpatory evidence of justification and excuse. In a system so blatantly skewed, it was inevitable that women would and did hide evidence, in precisely the manner of Mrs. Hale and Mrs. Peters, and as recorded, both journalistically and in fiction, by Susan Glaspell.

"A Jury of Her Peers" was certainly intended to be read as, and certainly should be read as, a condemnation of this exclusionary unfairness. Nevertheless, the novella is not only a tract for women's equality, nor for battered spouse defenses, nor for women's participation on juries — although it is most assuredly in part all of these. Like "Bartleby," what this story vividly records is not so much the forced oppression of a class of people by law, but their ideological oppression by a cultural system of meanings, and in the construction of which, law is at most complicit. But whereas "Bartleby" chronicles the system of meanings which cabin and constrain the charitable instincts of the powerful, "Jury" chronicles the system of meanings which cabin and constrain and frustrate the political consciousness of the weak. What "Jury" is about are the formidable obstacles — overwhelmingly ideological and psychic — confronting the political act ultimately taken by Mrs. Peters and Mrs. Hale. The act of defiance and solidarity taken by these two women is as difficult and "unnatural" for them as is the act of charity for the narrator in "Bartleby." What the novella does is provide a descriptive account of the women's state of mind, which might explain why this is so.

What are those obstacles? What *is* the content of the "false consciousness" of the oppressed, which renders their acquiescence so seemingly natural and voluntary? As suggested by the title of the play — "Trifles" — on which the novella is based, the women have indeed to some extent internalized the trivialization of their interests, concerns and perspectives so consistently voiced by the men in the story. The sheriff and county prosecutor in "Jury" — the only male characters — are indeed

two-dimensional, as male students who read the work at least in my "Law and Literature" class invariably complain, but their habitual belittlement, negation, bantering abuse, and condescension of their wives and female neighbors is surely not unfamiliar to even modern readers. This bantering abuse takes its toll — if you hear it often enough, you do begin to believe it. And these women hear it, Glaspell makes clear, relentlessly. It is as present to them as the air they breathe.

But on the other hand, we shouldn't make too much of it — the women themselves do not. Interestingly, the women's response to their own belittlement from the men they marry is ambiguous. Sometimes the women's comments and their self-reflections do echo it, evidencing a badly diminished self-concept. At other times, however, they clearly resist it, gaining strength from each other in so doing:

The sheriff... looked all around... "Nothing here but kitchen things," he said with a little laugh for the insignificance of kitchen things.

The county attorney was looking at the cupboard — a peculiar ungainly structure ... As if its queerness attracted him, he got a chair and opened the upper part and looked in. After a moment he drew his hand away sticky.

"Here's a nice mess," he said resentfully.

The two women had drawn nearer, and now the sheriff's wife spoke.

"Oh — her fruit," she said, looking to Mrs. Hale for sympathetic understanding. She turned back to the county attorney and explained: "She worried about that when it turned so cold last night. She said the fire would go out and her jars might burst."

Mrs. Peter's husband broke into a laugh.

"Well, can you beat the women! Held for murder, and worrying about her preserves!"

* * * * *

"Oh, well," said Mrs. Hale's husband, with good natured

superiority, “women are used to worrying over trifles.”

The two women moved a little closer together. Neither of them spoke. The county attorney seemed suddenly to remember his manners — and think of his future.

“And yet,” said he,...“for all their worries, what would we do without the ladies?”

The women did not speak, did not unbend. He went to the sink and began washing his hands. He turned to wipe them on the roller towel — whirled it for a cleaner place.

“Dirty towels! Not much of a housekeeper, would you say, ladies?”

...“There’s a great deal of work to be done on a farm,” said Mrs. Hale stiffly.... “Those towels get dirty awful quick. Men’s hands aren’t always as clean as they might be.”

“Ah, loyal to your sex, I see,” he laughed...⁵⁵

The men’s attitude toward their wives and toward women’s work accounts for their own obtuseness, but it does not entirely account for the women’s difficulty in forming common cause with Minnie Foster. Of far greater importance, at least in Mrs. Hale’s mind, was the physical and emotional isolation of each woman from every other. Mrs. Hale returns to this isolation — this failure, or inability, on the part of the women to sustain a community among themselves — again and again, and she returns to this theme, throughout the story, with increasing degrees of remorse. She first comments on it in a fairly matter-of-fact tone:

Time and time again it had been in her mind, “I ought to go over and see Minnie Foster” — she still thought of her as Minnie Foster, though for twenty years she had been Mrs. Wright. And then there was always something to do and Minnie Foster would go from her mind.⁵⁶

Later, she ascribes her reluctance to visit Minnie to the *cheerlessness* of the household, although for at this point no clearly articulated reason. By this point, she is uncomfortable with the insight, and she refrains from

discussing the point in the presence of the men:

"But you and Mrs. Wright were neighbors. I suppose you were friends, too."

Martha Hale shook her head.

"I've seen little enough of her of late years. I've not been in this house — it's more than a year."

"And why was that? You didn't like her?"

"I liked her well enough," she replied with spirit. "Farmers' wives have their hands full, Mr. Henderson. And then —" she looked around the kitchen.

... "It never seemed a very cheerful place," said she, more to herself than to him.

"No," he agreed; "I don't think anyone would call it cheerful. I shouldn't say she had the home-making instinct."

"Well, I don't know as Wright had, either," she muttered.

"You mean they didn't get on very well?" he was quick to ask.

"No, I don't mean anything," she answered... "But I don't think a place would be any the cheerfuller for John Wright's bein' in it."⁵⁷

Later, when the men have left the room, she explains in more detail her own motives and her own regret for having abandoned Minnie Foster, to Mrs. Peters:

"But I tell you what I do wish, Mrs. Peters.

I wish I had come over here sometimes when she was here. I wish — I had.

...I stayed away because it weren't cheerful — and that's why I ought to have come. I ...never liked this place. Maybe because it's down in a hollow and you don't see the road. I don't know what it is, but it's a lonesome place, and always was. I wish I had come over to see Minnie Foster sometimes. I can see now — " She did not put it into words."⁵⁸

Eventually, she suggests a more ominous reason for her reluctance to involve herself — her suspicion that Foster's problems are not altogether different from her own. By this point, almost at the end of the story, she is clearly panicked and guilt ridden by her belated recognition of her neglect of her one-time friend:

The picture of that girl, the fact that she had lived neighbor to that girl for twenty years, and had let her die for lack of life, was suddenly more than she could bear.

"Oh, I *wish* I'd come over here once in a while!" she cried. "That was a crime! That was a crime! Who's going to punish that?"

"I might'a *known* she needed help! I tell you, it's *queer*, Mrs. Peters. We live close together, and we live far apart. We all go through the same things — its all just a different kind of the same thing! If it weren't — why do you and I *understand*? Why do we *know* — what we know this minute?"⁵⁹

The women in *Jury* are reluctant to act in solidarity and on the basis of their knowledge because of their sense of the futility of political effort — the sheer weight of the given. "The law's the law," Mrs. Peters repeatedly reminds Mrs. Hale — even if, as Mrs. Hale retorts, "A bad stove's a bad stove."

The major obstacle, however, facing the women's groping attempts toward solidarity with Minnie Foster is ultimately voiced by the men. Each woman is isolated from every other, not only by physical distance, but through the legally created and perpetuated institution of marriage itself, and the state of mind that it inculcates. Mrs. Peters in particular is continually described as a sheriff's wife — even if, as Mrs. Hale opines at the outset of the story, she doesn't quite look the part. "Of course, Mrs. Peters is one of us," the county attorney remarks, "in a manner of entrusting responsibility."⁶⁰

At the dramatic climax of the story, the county attorney returns to the matter of Mrs. Peters's legal status, driving the point home. The women watch in fascinated, suspended horror as he narrowly avoids accidentally uncovering the hidden dead bird, while he explains his reasons for not feeling the need to examine with any care the items the women have gath-

ered to take to the accused farm wife. Part of the reason is the trust he places in Mrs. Peters, as a representative of the law:

“No, Mrs. Peters doesn’t need supervising. For that matter, a sheriff’s wife is married to the law. Ever think of it that way, Mrs. Peters?” ...Mrs. Peters had turned away. When she spoke, her voice was muffled.

“Not — just that way,” she said.

“Married to the law!” chuckled Mrs. Peters’ husband.⁶¹

The county attorney is surely right. It is precisely her “marriage to the law” and the law’s marriage to patriarchy — not simply a falsely diminished view of herself — that keeps her loyal to him and his sex, rather than Minnie Foster and her suffering. The function of law, in this story, is not only to hypocritically and unequally punish Minnie Foster for the justified or excusable murder of her husband, where it would not have punished a cuckolded man. The function of law is to validate, through the institution of marriage, the isolation of women from each other.

III. Conclusion: Breaking Away

Neither of these stories is tragic. “A Jury of Her Peers,” in fact, ends somewhat triumphantly: the two women do ultimately join forces with each other and in solidarity with Minnie Foster, protecting her from her legal fate. Throughout the story, at each moment of dawning comprehension of the commonness of their fate, the women’s eyes meet in recognition, bringing them the physical proximity to each other that their own marriages have torn asunder. As they first acknowledge the unevenness of Minnie Wright’s sewing — and the import of that sewing — their eyes meet:

“The sewing” said Mrs. Peters, in a troubled way. “All the rest of them have been so nice and even — but — this one. Why, it looks as if she didn’t know what she was about!”

Their eyes met — something flashed to life, passed between them; then, as if with an effort, they seemed to pull away from each other. A moment Mrs. Hale sat there, her hands folded over that sewing which was so

unlike all the rest of the sewing. Then she had pulled a knot and drawn the threads.

"Oh, what are you doing, Mrs. Hale?" asked the sheriff's wife, startled.

"Just pulling out a stitch or two that's not sewed very good," said Mrs Hale, mildly.⁶²

Similarly, when they first find the broken door of the birdcage, their eyes meet in recognition:

"Look at this door," [Mrs. Peters] said slowly. "It's broke. One hinge has been pulled apart."

Mrs. Hale came nearer.

"Looks as if some one must have been — rough with it."

Again their eyes met — startled, questioning, apprehensive. For a moment neither spoke nor stirred. Then Mrs. Hale, turning away, said brusquely:

"If they're going to find any evidence, I wish they'd be about it. I don't like this place."⁶³

When they discover the dead bird, the same action is repeated:

The sheriff's wife again bent closer.

"Somebody wrung its neck," said she, in a voice that was slow and deep.

And then again the eyes of the two women met — this time clung together in a look of dawning comprehension, of growing horror. Mrs. Peters looked from the dead bird to the broken door of the cage. Again their eyes met.⁶⁴

And finally, when the women act in joint conspiracy, their eyes actually seem to direct their physical actions:

Again — for one final moment — the two women were alone in that kitchen.

Martha Hale sprang up, her hands tight together, looking at that other woman, with whom it rested. At first she could not see her eyes, for the sheriff's wife had not turned back since she turned away at that suggestion

of being married to the law. But now Mrs. Hale made her turn back. Her eyes made her turn back. Slowly, unwillingly, Mrs. Peters turned her head until her eyes met the eyes of the other woman. There was a moment when they held each other in a steady, burning look, in which there was no evasion nor flinching. Then Martha Hale's eyes pointed the way to the basket in which was hidden the thing that would make certain the conviction of the other woman — that woman who was not there and yet who had been there with them all through that hour...

There was the sound of a knob turning in the inner door. Martha Hale snatched the box from the sheriff's wife, and got it in the pocket of her big coat just as the sheriff and the county attorney came back into the kitchen....⁶⁵

In recognition of the women's triumph, the story ends almost comically, affirming both the political solidarity, but also the secrecy and commonality of women's shared labor. Referring to an earlier conversation in which the men had mocked the women's interest in Minnie's quilting, and more specifically in what quilting technique she might have intended for the completion of the unfinished project, the county attorney asks:

"Well, Henry," ... "at least we found out that she was not going to quilt it. She was going to — what is you call it, ladies?"

Mrs. Hale's hand was against the pocket of her coat.

"We call it — knot it, Mr. Henderson."⁶⁶

"Bartleby" as well — although a much sadder story — ends on a note of solidarity, which has also been foreshadowed in earlier scenes. In fact, throughout the story, the narrator has moments of acting against the script of arms length contractual behavior, just as Hale and Peters have moments of acting against the script of obsequious wifely submissiveness. The narrator's moments of sympathy for Bartleby, and his feeling of common brotherhood with him, although invariably short-lived, are seemingly genuine. Upon discovering that the unproductive scrivener has also become a tenant, after registering shock, the narrator remarks sympathet-

ically upon his poverty, his loneliness and his manifest misery:

What miserable friendlessness and loneliness are here revealed! His poverty is great; but his solitude, how horrible! Think of it ... here Bartleby makes his home...

For the first time in my life a feeling of overpowering stinging melancholy seized me. Before I had never experienced aught but a non-unpleasing sadness. The bond of a common humanity now drew me irresistibly too gloom. A fraternal melancholy! For both I and Bartleby were sons of Adam. I remembered the bright silks and sparkling faces I had seen that day, in gala trim, swan-like sailing down the Mississippi of Broadway; and I contrasted them with the pallid copyist, and thought to myself, Ah, happiness courts the light, so we deem the world is gay; but misery hides aloof, so we deem that misery there is none. These sad fancyings ... led on to other and more special thoughts, concerning the eccentricities of Bartleby. Presentiments of strange discoveries hovered round me. The scrivener's pale form appeared to me laid out, among uncaring strangers, in its shivering winding sheet.⁶⁷

To what modern use might these stories be put? They remind us, minimally, of "the misery that hides aloof," and guard against the temptation to conclude that "misery there is none." In addition, they guard against a quite specific and specifically modern tendency — and temptation — to validate and legitimate suffering by denying the existence of large groups of victims. I am thinking here not of the "blame the victim" excesses of the modern political right, but of modern *liberatory* discourses, and particularly, the writings of a number of modern feminists, who urge feminists generally to eschew the focus on women's victimization which has unquestionably been at the core, historically, of virtually all strands of 20th century feminism. To insistently describe women as "victims," victimized by their common conditions, we are told, is to deny each individual in that group "agency," to demean her in her uniqueness, to insult her self-possession, awareness and autonomy, and to deny her felt freedoms.⁶⁸ But what if there are, in fact, just such victims, who have,

in fact, little if any autonomy, no sense of self-possession, and no “agency” to speak of, beyond the false freedom to deny their own victimization? If so, then there are groups of women suffering who possess neither heroism nor villainy but are rather, and simply, victims, and if so, then our refusal to see, discuss, or relieve that victimization is complicity, and it is a complicity against which we should be on guard.

Tort, contract, criminal law and constitutional law, despite their purported aim of relieving harm, do little to remind us of the presence of such victims among us, and in fact, their legitimating discourses do much to worsen the problem. Oddly, it is now *fiction* — including the stories of *Bartleby* and *Minnie Foster* — that can most strikingly remind us of the presence of real victims — non-heroic, non-villainous, real people suffering serious but invisible injury. In a curious inversion, we now increasingly demand of actors in true legal dramas either villainy or heroism — or at a minimum, true *agency* — and can only turn to narrative fiction — what in our childhood was our well from which we drew stories of heroism, with which to relieve the doldrums of blandness and ambiguities of real life — for depictions of the real suffering of those who have been rendered invisible by the silencing and fictional legitimating discourses of law. “*Bartleby*” and “*Trifles*” remind us of the presence and reality of human beings — neither heroes nor villains, and neither free nor in chains — suffering the burden of institutions legitimated by the Rule of Law we hold so dear.

“*Bartleby*” and “*Trifles*” remind modern readers as well, of course, of possibility: the possibility of breaking free of those bonds of complicity. Moments between women, in which women truly look at each other without “evasion or flinching” are rare, even in fiction, and certainly in law. Moments of true charity, of true “fraternal melancholy,” in which the strong, like the narrator, offer food and shelter to the weak, are rarer still. But they do occur, and they occur in each of these stories: the narrator’s charity in “*Bartleby*” is cabined by his sense of his own legal entitlement, but he nevertheless behaves charitably at the end of the day: he offers *Bartleby* the shelter of his own home, and the warmth of his own embrace, although both offers come too late. Mrs. Hale and Mrs. Peters do forge a common cause with *Minnie Foster*, despite being married to the law. These moments do not seem to be particularly transcendent, or fantastic; they seem quite realistic, even familiar. “*Bartleby*” does in the

end serve, as Brook Thomas argues, to make the forces of legitimation that constrain the narrator's responses and validate his capitalist privilege seem strange, and indefensible. But it does more: it also serves to make the moment of common humanity seem familiar, and even inevitable. "Trifles" likewise does serve, as Marina Angel argues, to render the legitimation of marital violence foreign and unjust. But it too does more: it makes the moment of common cause, albeit fleeting, utterly recognizable. It is in the end a *relief* when the narrator finally recognizes Bartleby's humanity, and it is a relief when Mrs. Hale and Mrs. Peters act in concert on Minnie Foster's behalf. Both stories remind their reader of our recognition of that common bond and that common purpose. And both do so against the considerable weight of legal habit — both the characters' habits and our own.

- 1 For a general introduction see David Kairys, ed., *The Politics of Law* (New York: Pantheon, 1992).
- 2 Brook Thomas, *Cross Examinations of Law and Literature: Cooper, Hawthorne, Stowe and Melville* (New York: Cambridge University Press, 1987).
- 3 Page numbers will be to Herman Melville, *The Shorter Novels of Herman Melville*, Raymond Weaver, ed. (New York: Fawcett Premier Press, 1956).
- 4 Thomas, *supra* note 2 at 164-82.
- 5 Susan Glaspell, *A Jury of Her Peers*. Footnotes will be to the collected work, "Short Stories of Modern Day Authors."
- 6 See Melville, *supra* note 3 at 120-121.
- 7 *Id.*, at 114.
- 8 *Id.*, at 118.
- 9 *Id.*, at 118.
- 10 *Id.*, at 114.
- 11 *Id.*, at 121.
- 12 *Id.*, at 147.
- 13 *Id.*, at 120.
- 14 *Id.*
- 15 *Id.*, at 122.
- 16 *Id.*, at 134.
- 17 *Id.*, at 135.
- 18 *Id.*, at 129; 132; 136; 146.

-
- 19 *Id.*, at 143.
- 20 *See* Thomas, *supra* note 2 at 177.
- 21 *See* Melville, *supra* note 2 at 132.
- 22 *See* Thomas, *supra* note 2 at 165.
- 23 *Id.*, at 165, 173.
- 24 *Id.*, at 177.
- 25 *Id.*, at 167-69.
- 26 *Id.*, at 169-72.
- 27 *Id.*, at 172-73.
- 28 *See* William Page, "The Ideology of Law and Literature," 68 *Boston University Law Review* 805, 811 (1988); Thomas, *supra* note 2 at 169.
- 29 *Id.*, at 173.
- 30 *See* Melville, *supra* note 3 at 117-118.
- 31 *Id.*, at 133.
- 32 *Id.*, at 115.
- 33 *Id.*, at 120.
- 34 *Id.*, at 144.
- 35 *Id.*, at 137.
- 36 *Id.*, at 124-25.
- 37 *Id.*, at 137-38.
- 38 *Id.*, at 114.
- 39 *Id.*, at 138-39.
- 40 *Id.*, at 130.
- 41 *Id.*, at 139.
- 42 *Id.*, at 139-40.
- 43 Richard Weisberg, *The Failure of the Word: The Protagonist as Lawyer in Modern Fiction* (New Haven: Yale University Press, 1984), p.134.
- 44 *Id.*, at 133-176.
- 45 *See* Thomas, *supra* note 2 at 179-180.
- 46 *See* Page, *supra* note 28 at 811-812.
- 47 *See* Glaspell, *supra* note 5 at 75.
- 48 *Id.*, at 85.
- 49 *Id.*, at 87-88.
- 50 *Id.*, at 93.
- 51 *Id.*, at 92.
- 52 *Id.*, at 95.

-
- 53 Marina Angel, "Trifles," ____ *Georgetown Criminal Law Review* ____ at ____ (forthcoming, 1996).
- 54 *Id.*, at ____.
- 55 See Glaspell, *supra* note 5 at 81-83.
- 56 *Id.*, at 75-76.
- 57 *Id.*, at 82-83.
- 58 *Id.*, at 91.
- 59 *Id.*, at 96.
- 60 *Id.*, at 83.
- 61 *Id.*, at 98.
- 62 *Id.*, at 89.
- 63 *Id.*, at 91.
- 64 *Id.*, at 93.
- 65 *Id.*, at 98-99.
- 66 *Id.*, at 99.
- 67 See Melville, *supra* note 3 at 129.
- 68 For a full discussion and critique of this literature, see Kathy Abrahms, "Sex Wars Redux: Agency and Coercion in Feminist Legal Theory," 95 *Columbia Law Review* 304 (1995).



About the Authors

Perry Dane is Professor of Law at the Rutgers School of Law, Camden. He was previously on the faculty of the Yale Law School, and served as a law clerk to the Honorable William J. Brennan, Associate Justice of the United States Supreme Court. Professor Dane is a graduate of Yale College (*summa cum laude* 1978) and Yale Law School (1981). His research and teaching interests include Religion and the Law, Conflict of Laws, Jurisdiction, American Indian Law, the Jurisprudence of Jewish Law, Abortion, and Contracts. In January 1997, he will be Distinguished Visiting Professor at the University of Toronto Faculty of Law, teaching an intensive course on Religion and the Law.

Susan P. Koniak, Professor of Law, Boston University, is an author of *The Law and Ethics of Lawyering*, along with Professors Roger C. Cramton of Cornell and Geoffrey C. Hazard of Pennsylvania. In addition to legal ethics, she teaches Constitutional Law and Criminal Law and has written a number of articles relating to Civil Procedure and federal courts.

Peter Margulies is Associate Professor of Law and Director of the Immigration Clinic at St. Thomas University in Miami, Florida. He received his B.A. from Colgate University in 1978, and his J.D. from Columbia Law School in 1981. His articles include, "Progressive Lawyering and Lost Traditions" (Review Essay), 73 *Texas Law Review* 1139 (1995), which examines the redemptive jurisprudence of Robert Cover and Milner Ball; "The Mother with Poor Judgment and Other Tales of the Unexpected: A Civic Republican View of Difference and Clinical Legal Education," 88 *Northwestern University Law Review* 695 (1994), which applies a narrative approach to clinical legal education; and "Difference and Distrust in Asylum Law: Haitian and Holocaust Refugee Narratives," 6 *St. Thomas Law Review* 135 (1994), which compares assessments of the credibility of Haitian and Holocaust refugees.

Suzanne Last Stone is Professor of Law at Cardozo Law School. She was Danforth Fellow at Yale University in 1974-75, pursuing research on Judaism in the Greco-Roman period. She has published several articles in the fields of law and religion and Jewish law, including "In Pursuit of the Countertext: The Turn to the Jewish Legal Model in Contemporary American Legal Theory," 106 *Harvard Law Review* 813 (1993), which focuses on the work of Robert Cover.

Robin West is Professor of Law at the Georgetown University Law Center. She has written numerous articles in Law and Literature and is the author of *Narrative Authority and Law*. She lives in Baltimore with her husband and three children.

Stephen Wizner, A.B. from Dartmouth College (1959) and J.D. from the University of Chicago (1963), is William O. Douglas Professor of Law at Yale Law School. He has published numerous articles including several dealing with issues of Children's Rights and the Homeless.